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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
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13 ADRIAN MONGELI, Individually, And)
14 On Behalf Of All Others Similarly Situated,)

15 Plaintiff,)

16 vs.)

17 TERA YON COMMUNICATION)
18 SYSTEMS, INC., JERRY D. CHASE,)
19 RAY FRITZ, EDWARD LOPEZ, CAROL)
20 LUSTENADER, MATTHEW MILLER,)
21 ZAKI RAKIB, SHLOMO RAKIB, MARK)
22 A. RICHMAN, CHRISTOPHER)
23 SCHAEPE, MARK SLAVEN, LEWIS)
24 SOLOMON, HOWARD W. SPEAKS,)
25 ARTHUR T. TAYLOR, DAVID)
26 WOODROW, DOUG SABELLA and)
27 ERNST & YOUNG, LLP)

28 Defendants.)

CIVIL DOCKET NO.: 06-CV-03936 CW

CLASS ACTION

**FINAL JUDGMENT AND ORDER OF
DISMISSAL WITH PREJUDICE**

Date: September 18, 2008

Time: 2:00 p.m.

Courtroom: 2

Judge: Hon. Claudia A. Wilken

1 This matter came before the Court for hearing pursuant to an Order of this Court, dated April
2 14, 2008, on the application of the Settling Parties for approval of the settlement set forth in the
3 Stipulation of Settlement dated as of February 19, 2008 (the "Stipulation"). Due and adequate
4 notice having been given of the settlement as required in said Order, and the Court having
5 considered all papers filed and proceedings held herein and otherwise being fully informed in the
6 premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND
7 DECREED that:

8 1. This Judgment incorporates by reference the definitions in the Stipulation, and all
9 terms used herein shall have the same meanings set forth in the Stipulation.

10 2. This Court has jurisdiction over the subject matter of the Litigation and over all
11 parties to the Litigation, including all Members of the Class.

12 3. Except as to any individual claim of those Persons who have validly and timely
13 requested exclusion from the Class, the Litigation and all claims contained therein, including all of
14 the Released Claims, are dismissed with prejudice as to the Lead Plaintiff and the other Members of
15 the Class, and as against each and all of the Released Persons. The parties are to bear their own
16 costs, except as otherwise provided in the Stipulation.

17 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby
18 approves the settlement set forth in the Stipulation and finds that said settlement is, in all respects,
19 fair, reasonable and adequate to, and is in the best interests of, the Lead Plaintiff, the Class and each
20 of the Class Members. This Court further finds the settlement set forth in the Stipulation is the
21 result of arm's-length negotiations between experienced counsel representing the interests of the
22 Lead Plaintiff, the Class Members and the Defendants. Accordingly, the settlement embodied in the
23 Stipulation is hereby approved in all respects and shall be consummated in accordance with its
24 terms and provisions. The Settling Parties are hereby directed to perform the terms of the
25 Stipulation.

26 5. Upon the Effective Date, the Lead Plaintiff and each of the Class Members shall be
27 deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,
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1 relinquished and discharged all Released Claims against the Released Persons, whether or not such
2 Class Member executes and delivers a Proof of Claim and Release form.

3 6. Upon the Effective Date, all Class Members and anyone claiming through or on
4 behalf of any of them, will be forever barred and enjoined from commencing, instituting,
5 prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity,
6 arbitration tribunal, or administrative forum, asserting the Released Claims against any of the
7 Released Persons.

8 7. Upon the Effective Date hereof, each of the Released Persons shall be deemed to
9 have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished
10 and discharged the Lead Plaintiff, each and all of the Class Members, and Lead Counsel from all
11 claims (including Unknown Claims), arising out of, relating to, or in connection with the institution,
12 prosecution, assertion, settlement or resolution of the Litigation or the Released Claims.

13 8. The distribution of the Notice of Pendency and Proposed Settlement of Class Action
14 and the publication of the Summary Notice as provided for in the Order Preliminarily Approving
15 Settlement and Providing for Notice constituted the best notice practicable under the circumstances,
16 including individual notice to all Members of the Class who could be identified through reasonable
17 effort. Said Notice provided the best notice practicable under the circumstances of those
18 proceedings and of the matters set forth therein, including the proposed settlement set forth in the
19 Stipulation, to all Persons entitled to such notice, and said Notice fully satisfied the requirements of
20 Federal Rule of Civil Procedure 23, the requirements of due process, and any other applicable law.

21 9. Any plan of allocation submitted by Lead Counsel or any order entered regarding the
22 attorneys' fee and expense application shall in no way disturb or affect this Final Judgment and shall
23 be considered separate from this Final Judgment.

24 10. Neither the Stipulation nor the settlement contained therein, nor any act performed or
25 document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may
26 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released
27 Claim, or of any wrongdoing or liability of the Defendants or their Related Parties; or (b) is or may
28 be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of

1 the Defendants or their Related Parties in any civil, criminal or administrative proceeding in any
2 court, administrative agency or other tribunal. Defendants and/or their Related Parties may file the
3 Stipulation and/or the Judgment in any other action that may be brought against them in order to
4 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,
5 good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue
6 preclusion or similar defense or counterclaim.

7 11. Without affecting the finality of this Judgment in any way, this Court hereby retains
8 continuing jurisdiction over (a) implementation of this settlement and any award or distribution of
9 the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund;
10 (c) hearing and determining applications for attorneys' fees and expenses in the Litigation; and (d)
11 all parties hereto for the purpose of construing, enforcing and administering the Stipulation.

12 12. The Court finds that during the course of the Litigation, the Settling Parties and their
13 respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure
14 11.

15 13. In the event that the settlement does not become effective in accordance with the
16 terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement
17 Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered
18 Null and void to the extent provided by and in accordance with the Stipulation and shall be vacated
19 and, in such event, all orders entered and releases delivered in connection herewith shall be null and
20 void to the extent provided by and in accordance with the Stipulation.

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14. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED:

DATED: _____

THE HONORABLE CLAUDIA A. WILKEN
UNITED STATES DISTRICT JUDGE

Submitted by:

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